IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1916 of 1989
with
SPECIAL CIVIL APPLICATION No. 4299 of 2004
to
SPECIAL CIVIL APPLICATION No. 4344 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V.B.KATARIA & Ors.

Versus

GUJARAT ELECTRICITY BOARD & Ors.

Appearance:

1. Special Civil Application No. 1916 of 1989
MR AJ YAGNIK with GIRISH PATEL for Petitioner
MR MD PANDYA for Respondents

2. Special Civil Applications No. 4299 to 4344 of 2004
MR AJ YAGNIK for Petitioners
MR MD PANDYA for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 13/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners in all these petitions are similarly situated and claim identical relief. These petitions are, therefore, with the consent of the learned advocates, decided by this common judgment.

On 30th May, 1983, the Gujarat Electricity Board [hereinafter referred to as, "the Board"], the respondent herein, published an advertisement inviting applications for appointment of Graduate Engineer Trainees in Electrical, Mechanical and Civil Engineering on a consolidated pay of Rs.1,400/= p.m. The said advertisement stipulated, inter alia, that the selected candidates would be given; 'on job training' for a period of one year; that on completion of one year of apprenticeship training, the candidates with good performance would, after due test and interview, be considered for post of Junior Engineer on regular basis; that the candidates so selected would be kept on probation for a period of six months and thereafter on completion of satisfactory probation they would be confirmed in the post of Junior Engineer. Pursuant to the said advertisement, the petitioners had applied for selection as Graduate Engineer Trainees and were appointed as graduate apprentice by order dated 13th July, 1984. The said order specified that the period of apprenticeship would be one year; that the appointee shall execute a contract to serve as Graduate Apprentice as per the prescribed form; that during the period of apprenticeship, the appointee shall be eligible to receive basic pay of Rs. 700/= plus dearness allowance and other allowances admissible; that the appointee would be required to undergo training for a period of 52 weeks; that the trainee shall have to agree to serve the Board for three years after completion of 52 weeks' training; that the candidates shall report for duty, if agreeable to work as Graduate Apprentice on the terms stated. The petitioners accepted the said appointment as Graduate Apprentice. On completion of 52 weeks' training at various power stations in the State of Gujarat and out of the State of Gujarat, the petitioners took examination as

was given by the Board. The petitioners having passed the said examination were appointed as Junior Engineers by the appointment order dated 2nd August, 1985 on the terms and conditions mentioned therein. Condition No. 18 thereof expressly specified that the petitioners were allotted to the generation side and the seniority would be maintained from the date of joining the Board and as per the order of merit achieved at the final evaluation test taken on completion of 52 weeks' training programme for all purposes, including promotion and such other benefits. The petitioners did accept the said appointments. By Establishment Circular No. 452 dated 3rd August, 1985 instructions were issued with respect to the date of increment of the Graduate Engineer Trainees. A further circular came to be issued on 13th December, 1985 that the power station trainee engineers who had completed 52 weeks' training in various power stations and were given appointment on or after 1st August, 1985 without break in service were to be allowed to earn normal annual increment on their regular posting in the pay scale of Rs. 700-1665 with all other consequential benefits. On 24th August, 1988, pursuant to the settlement under Section 2 (p) read with section 18(1) of the Industrial Disputes Act, the Board issued General Standing Order No. 312 with respect to the revision of payscales and the fringe benefits. The said GSO No. 312 has been clarified by Establishment Circular No. 506 issued on 21st September, 1988.

Learned advocate Mr. Yagnik has appeared for the petitioners. He has submitted that the conjoint reading of all the aforesaid documents would necessarily lead to a conclusion that the petitioners were not the apprentices as mentioned in the order of appointment dated 13th July, 1984. By the said orders dated 13th July, 1984, the petitioners were indeed appointed as Junior Engineers in the regular payscale of Rs. 700-1665; were given the benefit of increment on completion of one year of service as trainee. Hence, for all practical purposes, the petitioners were appointed as Junior Engineers by the Board by orders dated 13th July, 1984. That is the date which shall be relevant for the purpose of seniority of the petitioners vis-a-vis other Jr. Engineers in the Board. However, to the utter dismay of the petitioners, the Board has applied a different yardstick as to the seniority of the petitioners vis-a-vis the other Junior Engineers employed in the Board. For the purpose of seniority, the 52 weeks' training period has not been considered to be the service period and thereby the petitioners have been meted discriminatory treatment. He has submitted that it

has been the consistent practice of the Board to consider the period of training as the period of service. Nevertheless, in the case of the petitioners, the petitioners have been treated as apprentices. The period of training is excluded for the purpose of seniority. He has submitted that for appointment as apprentice, the Board and the apprentice are required to execute agreement and such agreement is required to be registered under the Apprenticeship Act, 1961. Indisputably, in the case of the petitioners, the registration of the agreement was not made in accordance with the requirements of the said Act of 1961. The registration of agreement being a prerequisite, the petitioners cannot be said to be the apprentices. The petitioners were not paid stipend during the period of training, instead, the petitioners were paid regular salary i.e. the pay and allowances as were admissible to the Junior Engineers in the Board. In the submission of Mr. Yagnik, therefore, the petitioners should take their seniority from 23rd July, 1984 i.e., the date when they joined service of the Board as Graduate Engineer Trainees. Mr. Yagnik has further submitted that the condition no.18 mentioned in the order of appointment dated 2nd August, 1985 has not been correctly construed by the Board. The said condition no. 18 refers to the interse seniority amongst the present petitioners who were appointed as Graduate Engineer Trainees by order dated 13th July, 1984 but it also stipulates that for the purpose of seniority, the date of joining the Board i.e. as Graduate Engineer Trainees shall be the relevant date. He has submitted that the action of the Board in assigning seniority to the petitioners with effect from 2nd August, 1985 is contrary to the aforesaid condition no. 18. Mr. Yagnik has further submitted that since the appointment of the petitioners as Graduate Engineer Trainees, another batch of trainee engineers came to be appointed. According to the terms and conditions of their appointment, their period of training was for six months. On completion of the period of six months, they were appointed as Junior Engineers. Thus, though the said trainee engineers were appointed as Graduate Engineer Trainees after the petitioners were so appointed, they have been given seniority over the petitioners. Thus, the petitioners have been meted discriminatory treatment vis-a-vis the said engineers who were required to undergo a shorter period of training.

Learned advocate Mr. Yagnik has also relied upon the above referred Establishment Circular No. 458 dated 3rd August, 1985 and the Award of the Industrial Tribunal, Ahmedabad in Reference [IT] No. 117 of 1987.

He has submitted that in Reference [IT] No. 117, a similar claim was raised by some 15 Junior Engineers wherein the Board agreed that the said Engineers shall be given all service benefits from the date they were appointed as Jr.Engineers [Electrical or Mechanical]. The petitioners are, therefore, entitled to a similar treatment. Relying upon GSO No. 312 and Establishment Circular No.506, it has been submitted that by issuing the said order and the circular, the Board has decided to recover the benefits given to the petitioners. In above view of the matter, the petitioners have prayed for a relief that the petitioners are entitled to seniority from the date they joined the service of the Board as Graduate Engineer Trainees. It is also prayed that the Board be restrained from effecting recovery in pursuance of the Establishment Circular No. 506.

In support of his contentions, Mr. Yagnik has relied upon the judgment of this Court in the matter of State of Gujarat & Anr. vs.Chauhan Ramjibhai Karsanbhai [2004 (1) GLR 885].

The petitions are contested by the learned advocate Mr. Pandya. Mr. Pandya has submitted that in view of the future expansion in the generation activities of the Board and with a view to meeting the future need, the Board had created supernumerary posts of Junior Engineers to be trained by the Board at different power stations. He has submitted that the advertisement inviting applications for appointment as Graduate Engineer Trainees specifically stipulated that the candidate would be required to undergo training for 52 weeks; that only those Graduate Trainees whose performance was found to be good after due test and interview would be considered for appointment as Junior Engineer; that after the appointment as Junior Engineer, the candidate would be required to undergo a period of probation; only on satisfactory completion of probation period, such candidate would be confirmed as Junior Engineer. The order of appointment dated 13th July, 1984 also specified that the said appointment was as an Apprentice for the purpose of training alone and that the candidates were specifically notified to accept the appointment as Graduate Engineer Trainees only if they were agreeable to the terms and conditions mentioned therein. The condition no. 18 of the appointment order dated 1st August, 1985 also specifically mentioned that the seniority would be counted from the date the selected candidate joined the Board in order of merit achieved at the final evaluation test. Mr.Pandya has submitted that thus the petitioners having accepted the appointment on

the aforesaid terms and conditions, they cannot now be permitted to claim seniority from the date they joined the Board as Graduate Engineer Trainees. He has submitted that the Establishment Circular No.452 and the GSO No.312 and Establishment Circular No.506 do not apply to the petitioners who were not regular employees of the Board as on 1st August, 1985. As to the Award of the Industrial Tribunal made in Reference [IT] No.117 of 1987, it is submitted that the petitioners are not similarly situated as the claimants in the said reference. It is submitted that the said claimants were appointed as Trainee Engineers during the period between 1978 to 1983 against the clear vacancies of Junior Engineers. During the period of training, they were called upon to discharge duties as Junior Engineers. After completion of period of training, the said claimants were given a break and were appointed as Junior Engineers after a certain length of break. Keeping in view the prevalent legal position, the Board agreed to treat the said claimants as Junior Engineers from the date they were appointed as Trainee Engineers. In support of his contentions, Mr. Pandya has relied upon the judgment of the Hon'ble Supreme Court in the matter of Bhey Ram Sharma & Ors. Vs. Haryana State Electricity Board & Ors. [Civil Appeal Nos. 4152, 4153 and 3630 of 1993 :: Decided on 8th September, 1993] and in the matter of Director of Settlement & Ors. vs. D.Ram Prakash [2002 (1) CLR 143].

In the matter of State of Gujarat & Anr. [Supra], the contention that the workman concerned was an apprentice and not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 was rejected. The Hon'ble Court found that the agreement of apprenticeship had not been registered under the provisions of Apprenticeship Act, 1961 and no examination was given to the workman under the said Act. As such no training was given to the workman under the Apprenticeship Act. That being the lapse on the part of the petitioner-State Government, the workman was considered to be a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. In the matter of Bhey Ram Sharma & Ors. [Supra], the petitioners were appointed as Assistant Engineers-Class II [Electrical] and Apprentice Engineers [Electrical] by the respondent State Electricity Board. The order of appointment expressly stipulated that, "..He will have to undergo apprenticeship for a period of six months or such period as may be decided by the Board which can be extended upto a maximum of three years." After completion of the training, in terms of the advertisement, the

appellants were appointed as Assistant Engineers [Class-II]. The seniority assigned to the appellants from the date of their appointment after completion of period of apprenticeship was upheld by the Hon'ble Court. The Hon'ble Court observed that, "..We fail to appreciate as to how the appellants while challenging the seniority list can make a grievance in respect of the period of apprenticeship which was specifically mentioned in the advertisement and in the offer of appointment." In the matter of Director of Settlement & Ors. [Supra], the respondent's claim for counting the period of training for seniority was rejected by the Hon'ble Court.

In my view, the petitioners have failed to make out a case for seniority vis-a-vis the other Junior Engineers mentioned in the writ petition. Such claim should also fail as the averments made with respect to the other Junior Engineers are vague. Names, date of appointment, position in the seniority list and other relevant particulars of such other Junior Engineers are not mentioned; nor such Junior Engineers are impleaded as party respondents in the present set of petitions. The petitioners having accepted appointment on specified terms and conditions mentioned in the orders of appointment, they are also estopped from claiming seniority from the date before they joined service of the Board as Junior Engineers.

As recorded hereinabove, by advertisement published on 30th May, 1983 the applications were invited for appointment as Graduate Engineer Trainees on a consolidated pay. It did stipulate that the selected candidates shall have to undergo training for a period of one year in the units of the Board; that on completion of the period of training, their performance shall be evaluated by conducting evaluation test. The selected candidates would be appointed as Junior Engineers on the basis of result in such test. The order of appointment dated 13th July, 1984 also made specific stipulation about the training period. The candidates were specifically intimated that they should accept the said appointment only if they were agreeable to the said terms and conditions. Thus, the petitioners accepted the said appointments with clear understanding that they would be required to undergo training for a period of 52 weeks and that they would be considered for appointment on successful completion of period of training, on the basis of the performance in the evaluation test. Thus, even after completion of period of training, the appointment in the service of the Board was not automatic but the petitioners were required to take evaluation test. The

evaluation test was designed under the Office Note dated 25th/30th April, 1985. The said note also referred to the seniority of the selected candidates. It specified that the seniority of the selected candidates would be determined on the basis of their performance at the evaluation test. The appointment order dated 2nd August, 1985 also specified that, "your seniority will be maintained from the date of your joining the Board and as per the order of merit achieved at the final evaluation test on completion of 52 weeks training programme for all purposes including promotion and such other benefits as per the Board's rules and regulations." The words, "joining the Board" used in the above condition necessarily referred to the petitioners' joining the service of the Board after completion of training and after successfully undergoing the evaluation test. In the submission of Mr. Yagnik the words "joining the Board" should necessarily relate to the petitioners joining the Board as Trainees. The reference to the period of training, evaluation test and the merit achieved at the said test was made in connection with the interse seniority of the petitioners and had no connection whatever with the date of appointment i.e. 2nd August, 1985. The contention is recorded with a view to rejecting the same. There is no possibility of reading the condition in the manner suggested by Mr. Yagnik. The only meaning it gives out is that the material date for the purpose of seniority was the date the petitioners joined the service of the Board as Junior Engineers.

In my opinion at all material times, the petitioners were given a clear understanding that they were appointed as Graduate Engineer Trainees and that they would be required to undergo training for a period of 52 weeks. Their appointment in the Board was subject to the satisfactory performance as Graduate Engineer Trainees and the merit achieved at the evaluation test. The petitioners had accepted the appointment on the said terms. Even otherwise, prior to their appointment as Junior Engineers they were classified/ designated as Graduate Engineer Trainees. They were never designated as Junior Engineers. As stated in the counter affidavit, the entire period of training was exclusively devoted for training. The petitioners were never called upon to perform duties of a Junior Engineer. The petitioners were appointed as Junior Engineers on 2nd August, 1985, their claim for seniority prior to that date is misconceived and requires to be rejected. Whether the petitioners can be said to be apprentices or not is not a matter at issue. Even though the petitioners may not be

said to be the apprentices within the meaning of the Apprenticeship Act, 1961, the petitioners cannot have a claim of seniority for the period during which they were appointed as Graduate Engineer Trainees and were undergoing training.

The reliance placed on GSO No.312 and Establishment Circular No. 506 is equally misconceived. GSO No. 312 provides for revision of payscale and fringe benefits in respect of the regular employees of the Board with effect from 1st April, 1985. Admittedly, on 1st April, 1985, the petitioners were not the regular employees of the Board. Besides, the said GSO does not refer to the seniority of the employees of the Board. The Establishment Circular No. 506 is in the nature of clarification of the said GSO No. 312. The said order and the circular have no bearing on the seniority of the employees of the Board. The allegation made by the petitioners that pursuant to the said GSO 312, the Board was determined to recover the benefits given to the petitioners can not be culled from the said GSO or the Circular. I am, therefore, of the view that no cause of action has arisen.

The Establishment Circular No. 452 dated 3rd August, 1985 refers to the increments to the trainee Engineers/Junior Engineers [Trainee] who had been recruited before 1st October, 1979 in circles and had not been given increments with respect to first appointment. Admittedly, the petitioners were not recruited before 1st October, 1979, the petitioner's appointment as Graduate Engineer Trainees was made much latter i.e. on 13th July, 1984 that too in the power stations. As to the Award passed in Reference [IT] No. 117 of 1987, as explained by the Board, the claimants in the said reference were appointed against the clear vacancies in the cadre of Junior Engineer and during the period of training they had performed duties of Junior Engineer. The said claimants formed a different and distinct class of trainees. The benefit of seniority given to the said claimants, therefore, cannot be extended to the petitioners as a matter of course.

As stated in the counter affidavit in view of the expansion of the activities of the power generation, and with a view to man the power stations which were to be commissioned, the Board envisaged a future need of Junior Engineers and decided to train Graduate Engineers to man the activities at the power stations. With this specific intention, the Board created supernumerary posts on which the petitioners were appointed as Graduate Engineer

Trainees. Thus, the petitioners formed a different and distinct class of trainees. The fact that the petitioners were paid the pay and allowances as admissible in the regular pay scale; the fact that on appointment as Junior Engineers they were given the benefit of increment; the fact that they were continued in service of the Board after completion of period of training without break would not alter their position as Graduate Engineer Trainees and the terms and conditions of their appointment as such trainees.

In view of the above discussion, I am of the opinion that the claim made by the petitioners is misconceived and is not tenable. The petitioners are not entitled to any relief. The petitions are accordingly dismissed with cost. Rule nisi issued in each petition is discharged.

{Miss R.M Doshit, J.}

Prakash*